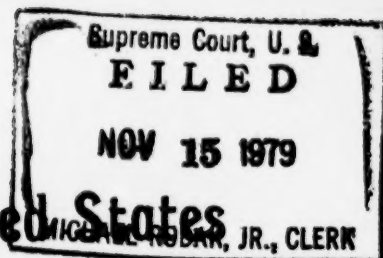


IN THE
Supreme Court of the United States



October Term, 1979.

No. 79-642.

JOHN J. DOUGHERTY,

Petitioner,

v.

CHRISTIAN HAALAND,

Respondent.

**BRIEF IN OPPOSITION
TO
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT.**

**MARK D. ALSPACH,
CARL A. PUTZ,
KRUSEN EVANS AND BYRNE,**
Public Ledger Building, 5th Floor,
6th and Chestnut Streets,
Philadelphia, PA 19106
Attorneys for Respondent.

IN THE
Supreme Court of the United States

October Term, 1979.

No. 79-642.

JOHN J. DOUGHERTY,

Petitioner,

v.

CHRISTIAN HAALAND,

Respondent.

**BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

*To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Respondent, Christian Haaland, respectfully prays
that the petition for a writ of certiorari be denied for the
reasons set forth hereafter.

JURISDICTION

Petitioner's statement must be supplemented. The
petition was filed on October 17, 1979. (p. 4 herein). 28
U. S. C. 2101(c) provides that a petition for a writ of
certiorari shall be applied for within ninety days after the
entry of the judgment in the Court below. The judgment
of the United States Court of Appeals for the Third Circuit
was entered on July 17, 1979 (Appendix F, A43). Thus
the ninety day period for filing the within petition expired
on October 15, 1979.

REASONS FOR DENYING THE WRIT

I. This Honorable Court Lacks Jurisdiction to Entertain the Petition Because It Was Filed Out of Time.

From the foregoing recited of the jurisdictional facts, it is clear that the petition was filed ninety two days after the entry of judgment in the Court below. Since 28 U. S. C. 2101(c) requires that the petition be applied for within ninety days after the entry of judgment in the Court below, this Honorable Court lacks jurisdiction to entertain the petition. For that reason, the petition should be denied.

II. The Petition Lacks Substantive Merit.

Should the petition not be denied in the ground previously advanced, it should nevertheless be denied because it lacks substantive merit.

There is No Conflict With the Decision of This Court in Edmonds v. Compagnie Generale Transatlantique, — U. S. —, 61 L. Ed. 2d 521 (1979).

The issue involved in the present case, and the issue involved in *Edmonds v. Compagnie Generale Transatlantique*, — U. S. —, 61 L. Ed. 2d 521 (1979), are entirely different. *Edmonds v. Compagnie Generale Transatlantique*, — U. S. —, 61 L. Ed. 2d 521 (1979) dealt solely with the *proper measure of recovery* in an instance where the negligence of the longshoreman, the shipowner's negligence and the negligence of the stevedore employer all combined to produce the injury. The sole issue involved in the present case is the sufficiency of the evidence to establish a breach of duty on the part of the shipowner. Based upon a meticulous review of the evidence, the District Court held that petitioner had failed to establish

a breach of duty on respondent's part, and the Court of Appeals affirmed.

Despite this obvious lack of identity of issues, petitioner attempts to create a conflict with *Edmonds v. Compagnie Generale Transatlantique*, — U. S. —, 61 L. Ed. 2d 521 (1979) by asserting that the "rule" formulated in the present case would bar recovery against a negligent shipowner if the stevedore did not carry out its duties in an "expert" fashion (Petition, p. 8). However, no such "rule" was enunciated in the present case; nor could any such "rule" have emerged, since negligence of the stevedore was not an issue.

III. Conclusion.

The testimony in the trial transcript is replete with evidence to support the District Court findings. The decision by the Court of Appeals and its grounds are clear. The Petition for Certiorari should be denied.

Respectfully submitted,

MARK D. ALSPACH,

CARL A. PUTZ,

Attorneys for Respondent.

Supreme Court of the United States

No. 79-642.

JOHN J. DOUGHERTY
Appellant-Petitioner

v.

CHRISTIAN HAALAND
Appellee-Respondent

To Carl A. Putz, Esquire, Counsel for Appellee-Respondent:

YOU ARE HEREBY NOTIFIED that a petition for a writ of certiorari in the above-entitled and numbered case was docketed in the Supreme Court of the United States on the 17th day of October, 1979.

At the request of the Clerk of the Supreme Court, we are sending attached hereto an appearance form to be filed by you, or other counsel who will represent your party, with the Clerk at or before the time you file your response to our petition or jurisdictional statement.

Only those counsel who file an appearance form can expect to receive notification of the Court's action(s) in this case.

ABRAHAM E. FREEDMAN, ESQ.
5th & Chestnut Sts.,
800 Lafayette Bldg.
Philadelphia, Pennsylvania 19106
Counsel for Appellant-Petitioner